



Exempt Action Final Regulation Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) citation	9 VAC15-90
Regulation title	Uniform Environmental Covenants Act Regulation
Action title	Establishment of regulations to implement the Virginia Uniform Environmental Covenants Act, 2010 Acts of Assembly Chapter 691 (SB 686)
Final agency action date	August 2, 2011
Document preparation date	July 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Department of Environmental Quality (DEQ or the Department) is adopting a new regulation to implement the Virginia Uniform Environmental Covenants Act (UECA), a statute enacted by the Virginia General Assembly in 2010 (Acts of Assembly Chapter 691, codified at §10.1-1238 et seq. of the Code of Virginia). The UECA statute grants DEQ authority to adopt this regulation and exempts this regulatory action from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Virginia's UECA statute is based on the model UECA statute developed by the National Conference of Commissioners on Uniform State Law (NCCUSL). The General Assembly adopted the model statute in 2010 with only a few alterations, including deletion of the requirement to maintain a registry of UECA covenants and addition of provisions for fees to be paid to DEQ to cover DEQ's costs in administering this regulation.

When real property is contaminated, environmental agencies may require that the contamination be completely cleaned up. Under appropriate circumstances, however, environmental agencies may allow some degree of contamination to remain on the property as long as restrictions – often termed “activity and use limitations” – are in place to protect human health and the environment. The environmental agency may require that these activity and use limitations be recorded as a deed restriction on the real property.

Traditionally in Virginia, such deed restrictions have been utilized as part of environmental response projects pursuant to common law. UECA provides another option that the agency and other parties may agree to utilize regarding such deed restrictions.

UECA provides a statutory framework that defines how activity and use limitations prescribed by an agency pursuant to an environmental response project are to be drafted, recorded, and enforced as a UECA “environmental covenant.” The UECA statute defines “environmental covenant” as “a servitude arising under an environmental response project that imposes activity and use limitations.” In its website documents, NCCUSL states that UECA environmental covenants help ensure public notice of these limitations, enhance enforcement of the limitations, and facilitate return of the sites to productive use. NCCUSL provides examples of advantages that this statutory approach purportedly provides over a common-law approach.

It is the purpose of this regulatory action to implement the provisions of UECA as that statute was enacted in Virginia.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On August 2, 2011, the Director of the Department of Environmental Quality approved the Uniform Environmental Covenants Act Regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
James Thornhill, McGuireWoods LLP; Channing Martin	Commenters believe that the term “environmental covenant” is broader than simply a covenant under UECA. One commenter believes that the term includes such things as a Declaration of Restrictive Covenants under DEQ’s Voluntary Remediation Program. The other commenter believes the term is broad enough to cover all activity and use limitations, not just those drafted and recorded pursuant to UECA. Commenters suggest revision of provisions to limit meaning of “environmental	The term “environmental covenant” is defined in the UECA statute. DEQ’s proposed regulation repeats this statutory definition verbatim. DEQ views “environmental covenant” as a “term of art” within the UECA context. The first line of the proposed regulation’s “Definitions” section (9VAC15-90-10) provides: “The following words and terms used <u>in this chapter</u> shall have the following meanings unless the context clearly indicates otherwise” (emphasis added). (The statute contains a similar proviso at the beginning of §10.1-1238.) DEQ views definitions within the proposed

<p>James Thornhill, McGuireWoods LLP; Channing Martin</p>	<p>covenant” to apply only to covenants created under UECA.</p> <p>Commenters are concerned that certain provisions imply that use of UECA is mandatory when activity and use limitations are required pursuant to an environmental response project. Commenters express this concern, in part, with relation to limiting the definition and application of the term “environmental covenant” to the UECA context, as discussed above. Commenters also suggest that the regulation explicitly state that use of UECA is voluntary, not mandatory.</p>	<p>regulation as prescribing what the words will mean in the context of the UECA regulation (that is, “in this chapter”), and not what the words will mean in other contexts. An environmental covenant is required by statute to “[s]tate that the instrument is an environmental covenant executed pursuant to the Uniform Environmental Covenants Act (§10.1-1238 et seq. of the Code of Virginia).” Given these statutory and proposed regulatory provisions, DEQ believes that use of the term “environmental covenant” is sufficiently circumscribed to mean only a covenant created under UECA.</p> <p>Nonetheless, DEQ will add the term “UECA” to precede use of the term “environmental covenant” within relevant provisions of the regulatory text to clarify that the provisions apply only to “UECA environmental covenants” and are not intended to apply outside the UECA context. DEQ will also insert the word “Act” within the title of the regulation (that is, “Uniform Environmental Covenants <u>Act</u> Regulation”) to emphasize that regulatory requirements relate to use of the UECA statute. DEQ intends to maintain the regulatory definition of “environmental covenant” as it is provided in the statute.</p> <p>Commenters’ request that use of the term “environmental covenant” be clearly restricted to the UECA context is addressed above. DEQ believes that use of the term “UECA environmental covenant” in relevant regulatory provisions will clarify that the enumerated requirements only apply when UECA is being utilized.</p> <p>Commenters’ concern about if and when UECA is required is addressed in the proposed regulation under the “Authority and Applicability” section (9VAC15-90-20). As in all of DEQ’s other regulations, the applicability section explains when the requirements of the given regulation must be followed. The applicability section of the proposed UECA regulation provides, in pertinent part, as follows: “When the Owner, Holder, and Agency determine that an environmental</p>
---	---	---

		<p>covenant shall be executed as part of an environmental response project, then the environmental covenant shall fulfill all of the requirements of this chapter.” DEQ believes that this provision communicates that UECA will not be required unless all three parties – the Owner, Holder, and Agency – so determine. The UECA statute stipulates that all three parties are necessary signatories to a UECA covenant. If any one of them declines to sign, there will be no UECA covenant.</p> <p>As stated above, DEQ intends to add the term “UECA” to this and other provisions in order to clarify the reach of the term “environmental covenant.” To assuage commenters’ concerns further, DEQ will substitute the word “agree” for the word “determine” within the “Authority & Applicability” section in order to clarify that execution of a UECA covenant is voluntary.</p> <p>The revised provision would say, “When the Owner, Holder, and Agency <u>agree</u> that a <u>UECA</u> environmental covenant shall be executed as part of an environmental response project, then the environmental covenant shall fulfill all of the requirements of this chapter.” Use of the word “agree,” however, in no way implies that the owner or holder must “agree” with the agency that activity and use limitations must be implemented and recorded as a deed restriction. It is within the agency’s sole discretion whether to make these requirements. Use of the word “agree” in this provision means only that all three parties agree that the required limitations and deed restriction will take the form of a UECA environmental covenant.</p> <p>It may be noted that the model statute is silent on whether use of UECA is mandatory or voluntary. DEQ staff interviewed a number of knowledgeable people during development of the proposed regulation regarding this and other UECA issues. NCCUSL representatives, attorneys with two federal agencies, and agency staff in several other UECA states advised that they view use of UECA as voluntary when states adopt the model UECA statute (or substantially similar). (Note: DEQ was advised that UECA is mandatory in Pennsylvania, because the state legislature specified that UECA must be utilized for all clean-up plans – past, present, and future.) NCCUSL and federal-agency representatives</p>
--	--	--

<p>James Thornhill, McGuireWoods LLP; Channing Martin; Virginia Manufacturers Association (VMA) by Joseph Croce</p>	<p>Commenters question DEQ's authority to require in the regulation that certain provisions be present in a UECA environmental covenant when DEQ is the holder or agency, particularly since the UECA statute provides that environmental covenants "may contain [such provisions if] agreed to by the persons who signed [the covenant]" (§10.1-1240 B).</p>	<p>interviewed by DEQ – as well as DEQ's advisors at Virginia's Office of the Attorney General (OAG) – reviewed Virginia's UECA statute and the proposed regulations, and interpreted them as being voluntary, to be implemented when the agency, holder, and owner all agree to sign the UECA document.</p> <p>While the regulatory language suggested by the commenters would explicitly explain that use of UECA is voluntary, DEQ believes that it exceeds the bounds of DEQ's proper role in developing and implementing the UECA regulation; i.e., defining what constitutes compliance with Virginia's UECA statute. Discussion of other options available to the parties is not within the scope of the UECA regulation. DEQ will consider addressing these matters in agency Guidance.</p> <p>As noted by commenters, the proposed Virginia UECA Template indicates with an asterisk (*) which provisions are required by statute for all UECA covenants. Commenters' concerns center on the non-asterisk provisions, which the proposed regulation indicates "shall be included unless the Department grants permission for particular provisions to be omitted, added, or modified" (9VAC15-90-30).</p> <p>After considering all the provisions in the proposed Virginia UECA Template in detail for almost a year, DEQ believes that they are reasonable and necessary for an effective UECA environmental covenant. The non-asterisk provisions in the proposed Virginia UECA Template have their origins in sources that DEQ finds valid and persuasive, including the following:</p> <ol style="list-style-type: none"> 1. §10.1-1240 B: This provision of the UECA statute provides a list of "optional" covenant provisions, in addition to the required covenant provisions in §10.1-1240 A. Especially after discussing these provisions with representatives of NCCUSL and other UECA states, DEQ staff believes that the provisions enumerated in the template help ensure adequate public notice and effective compliance with activity and use limitations and should
---	---	--

		<p>thus appear in Virginia UECA covenants.</p> <p>2. <u>Other sections of the UECA statute:</u> The subordination section of the proposed Virginia UECA Template provides requirements regarding potential subordination of prior interests. Subordination is discussed in considerable detail in §10.1-1239 D 1-4 of the UECA statute. If certain prior interests exist and they are not subordinated, then a UECA covenant regarding the property may be of little or no effect. DEQ’s proposed subordination provision was among those praised by the NCCUSL representatives who wrote the model statute. DEQ believes that it is prudent and necessary for subordination issues to be addressed before a UECA covenant is executed. The proposed provision helps ensure that this occurs.</p> <p>3. <u>Real-life considerations regarding effective public notice:</u> In today’s world, DEQ believes that effective public notice of real-property issues (including activity and use limitations that are the subject of a UECA covenant) involves use of tools like Google Earth. The geographic coordinates list required in the proposed Virginia UECA Template would enable such use.</p> <p>These commenters assert that DEQ lacks statutory authority to require inclusion of the provisions enumerated above. They specifically disagree with the phrase, “unless the Department grants permission for particular provisions to be omitted, added or modified” (9VAC15-90-30 A 2 and instructions to C).</p> <p>They suggest, inter alia, that DEQ remove the questioned provisions and replace them with a recapitulation of the statutory language -- that is, that provisions in addition to those required by statute (cf. §10.1-1240 A) may be included in the UECA environmental covenant if “agreed by the persons who signed it” (§10.1-1240 B).</p> <p>When DEQ is the agency or the holder of a UECA environmental covenant – which will be the case when the questioned regulatory provisions come into play -- DEQ’s signature on the covenant is required by law. The</p>
--	--	--

		<p>proposed regulation provides notice that DEQ plans to insist on use of the Virginia UECA Template, including the questioned provisions, when it is the agency or holder. (As one commenter put it, “Obviously the Department may not be willing to sign an UECA covenant for a particular environmental response project without certain conditions.”) At the same time, it is important to note, the regulation provides notice that the questioned provisions may be omitted, revised, or added to if the applicant presents convincing reasons to DEQ, and DEQ agrees.</p> <p>If DEQ were to follow commenters’ suggestion, an applicant might well present to DEQ a proposed UECA covenant that DEQ would find deficient, potentially resulting in greater expenditure of time and money by all parties to set forth and discuss such deficiencies. DEQ believes that the proposed regulation alerts UECA applicants that they should either propose a draft covenant that adheres to the template, or be prepared to offer reasons for diverging from the template’s provisions.</p> <p>As a matter of practical effect, DEQ may insist on inclusion of the questioned provisions when DEQ is a necessary party to a UECA environmental covenant. As a matter of semantics, DEQ will examine the wording of the questioned provisions and consider language revisions that will both alert the public to DEQ’s expectations for UECA environmental covenants and avoid the appearance of DEQ’s exceeding its statutory authority.</p> <p>Note: In the language questioned by commenters above, DEQ had originally drafted that these provisions could be omitted or amended with DEQ’s permission/agreement. DEQ later included reference to “additional” or “added” provisions after reviewing a draft UECA covenant containing a provision affirming that EPA’s serving as the “agency” did not constitute its taking an interest in real property. DEQ would have no problem with including this provision. DEQ believes that the currently proposed wording provides notice to the public that DEQ is amenable to inclusion of appropriate additional provisions and helps clarify that the regulation would permit addition of such provisions when all parties agree. DEQ does not view this proposed language as exceeding statutory authority, but rather as</p>
--	--	--

<p>James Thornhill, McGuireWoods LLP</p>	<p>Commenter believes that paragraph 4 of the Virginia UECA Template – relating to Notice of Limitations in Future Conveyances – is unnecessary and should be removed.</p>	<p>implementing the statute’s provision that “an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it” (§10.1-1240 B).</p> <p>The commenter asserts that activity and use limitations will appear in the title search and Phase I environmental audit that will accompany any future conveyance of the property; therefore, he believes that the notification purposes of this provision (9VAC15-90-30 C, paragraph 4) will already be accomplished. If the provision remains, he questions the legal effect if the notice were omitted.</p> <p>This provision is based on a similar section in Pennsylvania’s UECA template and has apparently proved useful in that state’s implementation of UECA. In addition, DEQ understands that this clause commonly appears in Virginia Outdoors Foundation (VOF) easements and other Virginia conservation easements. According to informal legal advice, it seems unlikely that failure to abide by the notice provision would be argued/found to invalidate any future conveyance. Inclusion of the provision will provide clear notice on the face of future conveyances that the UECA covenant exists. DEQ considered the comment but will retain the provision.</p>
<p>James Thornhill, McGuireWoods LLP; Channing Martin</p>	<p>The first of these commenters believes that 30 days is not sufficient time for the Grantor to record a UECA covenant, amendment, assignment, or termination, since the process may involve multiple original notarized signatures on one document. He notes that the Voluntary Remediation Program (VRP) allows 90 days.</p>	<p>DEQ believes the commenter’s request is reasonable and will change the time limit from 30 days to 90 days in 9VAC15-90-30 C, paragraph 8 a.</p>

	<p>The second of these commenters believes (1) that the 30-day requirement is not authorized by statute, (2) that the Department has other mechanisms for requiring that the UECA covenant be recorded by a specified deadline, and (3) that there may be circumstances under which the Department may want to specify a deadline different from the one provided in the template. The commenter further believes that inappropriate terminology appears in this provision.</p>	<p>DEQ agrees with most of this commenter’s reasoning, although DEQ continues to believe that the UECA covenant is the appropriate tool for communicating the recording deadline to all parties and the public. The legal effect of a UECA covenant that the responsible party has failed to record is a matter that should be made clear.</p> <p>DEQ will explain in the instructions for 9VAC15-90-30 C, paragraph 8 a, that recording the UECA covenant is required by statute; however, the deadline for doing so is not. When DEQ is a necessary party to the covenant, it intends to stipulate a deadline of 90 days, unless all parties (including DEQ) agree otherwise. When DEQ is not a necessary party, the Department recommends that the Agency similarly stipulate 90 days or another reasonable deadline. The Department will make analogous clarifications in the instructions for paragraph 8 b.</p> <p>This commenter also points out that DEQ used the term “file” in paragraph 8 a when it should have used “record.” That correction will be made.</p> <p>Finally, this commenter suggests that the recording deadline should be after the environmental covenant is “executed by all the parties,” and not after “the Agency’s approval,” as it is currently stated. The current wording already pegs the deadline for recording an amendment, assignment, or termination of the covenant to the date of “execution.” The question is whether the recording deadline should likewise be pegged to “execution.”</p> <p>DEQ would note that this provision, as well as a number of others in the Virginia UECA Template, is based on Pennsylvania’s template. DEQ talked extensively to Pennsylvania regulators while developing the proposed Virginia regulation and respects their experience and expertise in implementing their state’s version of the model statute.</p> <p>DEQ does not disagree with this commenter’s point that the covenant cannot be recorded until it has been executed by all parties; however, DEQ plans to defer to Pennsylvania and the current wording – if an applicant convinces the Agency to sign/approve the original UECA covenant (as opposed to an</p>
--	---	--

<p>James Thornhill, McGuireWoods LLP; Channing Martin</p>	<p>Commenters question the basis on which fees were calculated and observe that the proposed fees appear high.</p>	<p>amendment or termination) without the other necessary parties having signed, the applicant should have a specified amount of time in which to garner those other signatures and record the covenant.</p> <p>When the UECA statute was considered by Virginia’s General Assembly in 2010, DEQ’s Director stated that DEQ would not be opposed to the bill as long as there was no fiscal impact on the Department. Subsequently, the fee provisions were added to the bill in order to cover all of DEQ’s costs in implementing the program. It is very important to DEQ to ensure that these regulations provide adequate fees to cover all of the Department’s reasonably foreseeable costs.</p> <p>CONSIDERATION OF STAFF ADMINISTRATIVE COSTS: The proposed fees are based, in large part, on the average costs for comparable services rendered by DEQ staff in other regulatory programs.</p> <p>The fees reflect the projected costs associated with UECA, and not with DEQ’s administration of the underlying regulatory program (e.g., CERCLA, RCRA). For example, for UECA covenants where DEQ is the Holder, additional inspections, perhaps with a different emphasis from that of purely “regulatory” inspections, can be anticipated, and those costs were considered when formulating the proposed fee schedule.</p> <p>Regulators in Pennsylvania told DEQ staff that UECA adds approximately 1-4 hours of staff time to the process of developing an environmental response plan. Since Pennsylvania requires UECA for all such plans (past, present, and future), staff there is very experienced with UECA. Staff time may be greater in Virginia, where UECA is optional and staff may not process these transactions on a regular basis.</p> <p>According to West Virginia staff interviewed by DEQ and to West Virginia’s website, the UECA path in that state entails a user fee based on 2½ times the hourly rate of the staff person</p>
---	--	--

		<p>working on the project.</p> <p>DEQ believes that the fees proposed to capture the cost of DEQ staff time are reasonably based on the cost of UECA-related service rendered, and that they are in line with the approaches of other states.</p> <p>CONSIDERATION OF LEGAL COSTS: When DEQ is the Agency or the Holder of a proposed UECA covenant, larger fees are proposed in part to cover the costs of potential review and advice from the Office of the Attorney General (OAG) and/or from outside counsel engaged by the OAG for the task.</p> <p>A UECA covenant is a legal contract. As such, its contents must conform to the legal requirements for contracts dealing with real property. DEQ has received informal advice from the OAG that the Virginia UECA Template meets legal requirements – which is one of the reasons DEQ wants the template to be used. We are advised, however, that there may still be legal issues (for example, whether the description of the property is legally accurate and sufficient) on which DEQ might need legal advice even when the template is utilized.</p> <p>A well-crafted UECA covenant is particularly important if the UECA covenant is ever the subject of litigation. The proposed fee when DEQ is the Holder is considerably higher than when DEQ is the Agency, because the Holder is viewed as the first-line enforcer of a UECA covenant in court, and DEQ is unlikely to assume the role of Holder without thorough legal review and advice concerning a proposed UECA covenant.</p> <p>If a private party is the Holder and DEQ the Agency, then legal review and advice may also be critical. If at some future date the Holder is no longer a viable entity (bankrupt, unable to be located, etc.), then certain duties may devolve upon the Agency as “the last man standing” from the original transaction.</p> <p>Whereas DEQ has internal resources to enforce its substantive regulatory programs, it is not in a position to represent itself in court. DEQ’s reading of the statute is that a civil action is the only method of enforcing a UECA covenant <u>as a legal contract</u> (cf. §10.1-1247 A). The fees will help DEQ pay legal costs to the</p>
--	--	--

		<p>OAG or to outside counsel engaged by OAG for review and advice when the UECA covenant is originally executed, if it is subsequently amended or terminated, and during any discussions and negotiation prior to a potential lawsuit.</p> <p>Even though the UECA fee schedule is supposed to cover all of the Department's costs in administering UECA – which would include potential litigation costs related to §10.1-1247 A – the proposed fees do not, in fact, cover all of what DEQ might be required to pay the OAG or outside counsel to represent the Department if a full-blown lawsuit becomes necessary to enforce a UECA covenant, nor the cost of DEQ staff time to prepare documents for and participate in a lawsuit. DEQ staff devoted a great deal of time to researching fair and effective means of providing a “legal defense fund” for possible UECA litigation, but no practicable approach could be found.</p> <p>It is hoped that few UECA covenants will have to be enforced in court, especially since DEQ, when it is the Agency, is likely to use its “normal” regulatory powers to enforce the underlying regulatory programs and seek court enforcement of the UECA contract only under extreme conditions. DEQ staff’s research supported this assumption. Experienced property attorneys at EPA, DOD, NCCUSL, and OAG generally advised DEQ staff that a full-blown court case to enforce a UECA covenant is probably a somewhat remote occurrence – and one that might not occur, if at all, until decades after the original covenant is executed. They agreed, however, that the cost of a full-blown lawsuit may be very high, especially if experts from private law firms are brought into the picture to help represent DEQ. Although it is hoped that a court might ultimately award costs to DEQ, the Department could expect to have to pay outside counsel’s fees “up front.”</p> <p>Mechanisms utilized by other states (e.g., West Virginia), other state agencies (e.g., VOF), and other DEQ programs were considered to address these contingent, but potentially high, legal costs. No financial assurance mechanism or fee could be found that would not be financially over-burdensome or administratively infeasible. Since none was</p>
--	--	---

<p>James Thornhill, McGuireWoods LLP; Channing Martin</p>	<p>Commenters question the \$100 fee to be paid upon transfer of the property.</p>	<p>deemed feasible for DEQ at this stage, none was proposed.</p> <p>CONSIDERATION OF "TRACKING" COSTS: The discussion above focuses primarily on DEQ's administrative and legal costs when the Department is Holder or Agency of a UECA environmental covenant. Regardless of whether DEQ's function for a given UECA covenant is as Holder, Agency, or "neither," a fee of \$1000 is included in the proposed fee schedule to cover the cost of DEQ's entering information about the covenant in its electronic databases. Especially since Virginia's UECA statute does not include the model UECA's registry provision, the electronic databases are important as a means to help ensure public notice of UECA covenants.</p> <p>DEQ will continue to consider the issues of litigation costs, and of the reasonableness of regulatory fees, when the fee structure is evaluated pursuant to 9VAC15-90-40 F. If experience shows that the currently-proposed fees are too high or too low to recover DEQ's costs in administering UECA, then regulatory amendments will be considered.</p> <p>After conducting background interviews with staff at other state agencies who routinely administer deed-restriction-related programs, DEQ concluded that it would be prudent to include this modest fee when a UECA-encumbered property is transferred. In an analogous Virginia program, DEQ staff was told that new property owners sometimes appear unaware of their responsibilities under the deed restriction, even though the restriction clearly "runs with the land." The other agency advised that charging a modest fee serves to emphasize that the agency must be notified about any property transfer. The other agency indicated that they try to educate new owners about the deed restriction, thereby helping to ensure the owners' compliance with its terms.</p>
---	--	---

<p>Channing Martin</p>	<p>Commenter believes it is costly for the applicant to employ a title insurance company or attorney to perform a title review to determine encumbrances on the property, as provided in the instructions to paragraph 7 (Subordination) of the Virginia UECA Template. He asserts that incurring this cost is required by the regulation.</p>	<p>Similarly, DEQ wants to know when UECA-encumbered properties change ownership. The \$100 fee not only communicates the importance of notifying DEQ of the transfer, but also covers the costs associated with DEQ’s potential communication with the new owner about UECA requirements. These anticipated activities and costs are part of DEQ’s costs of administering UECA and therefore a proper subject of the UECA fee.</p> <p>The need for the subordination issue to be addressed in a UECA transaction is discussed in response to a previous public comment.</p> <p>As for the cost of addressing the subordination issue, experienced property attorneys advised DEQ that the involvement of a title insurance company or attorney helps ensure that the information regarding encumbrances is accurate. Since UECA documents are often utilized in the context of an actual or anticipated transfer of a contaminated property, these parties and a title search may well be involved already. If not, then the applicant can ask that this provision be omitted or modified, pursuant to 9VAC15-90-30 A 2, when DEQ is the Holder or the Agency for the UECA covenant. If DEQ is not the Holder or the Agency, then this provision is only recommended (cf. 9VAC15-90-30 B). Therefore, neither the provision nor the costs associated with complying with the provision are “minimum costs that must be incurred,” as the commenter asserts.</p>
<p>Channing Martin</p>	<p>Commenter believes it is costly and unnecessary for the applicant to provide geographic coordinate lists defining the boundary of activity and use limitations, as provided in paragraph 3 of the Virginia UECA Template. He asserts that incurring this cost is required by the regulation.</p>	<p>The need for these geographic coordinate lists is discussed in response to a previous public comment. Metes and bounds descriptions do not communicate to today’s public the location of these areas as effectively or meaningfully as do geographic coordinate lists.</p> <p>As for the cost of complying with this provision, if the applicant finds it to be overly-burdensome, he can ask that this provision be omitted or modified, pursuant to 9VAC15-90-30 A 2, when DEQ is the Holder or the Agency for the UECA covenant. If DEQ is not the Holder or the Agency, then this provision is only recommended (cf. 9VAC15-90-30 B).</p>

<p>Channing Martin</p>	<p>Commenter questions the necessity, cost, and sample reporting intervals associated with paragraph 5 of the Virginia UECA Template (Compliance and Use Reporting) for a “qualified and certified professional engineer” to provide written documentation that activity and use limitations are being observed.</p>	<p>Therefore, neither the provision itself nor the costs associated with complying with the provision are “minimum costs that must be incurred,” as the commenter asserts.</p> <p>This paragraph in the Virginia UECA Template is taken almost verbatim from §10.1-1240 B 2 of the statute, which lists provisions that may be part of a UECA covenant if agreed to by the signatories. As explained previously, DEQ has evaluated these “optional” provisions that are part of the model UECA statute (as well as the Virginia UECA statute) and believes that the ones set forth in the template are important and prudent in ensuring that the goals of the statute are realized.</p> <p>Where DEQ is a necessary signatory to a UECA covenant, this regulation puts everyone on notice that DEQ intends to insist that this and other “optional” provisions be included in all UECA covenants, unless the applicant presents convincing reasons (pursuant to 9VAC15-90-30 A 2) why DEQ should agree that the provisions be omitted, modified, or added to. Where DEQ’s signature is not required by statute, this provision and other provisions taken from §10.1-1240 B are recommended (cf. 9VAC15-90-30 B). This explanation applies similarly to public comments concerning other template provisions based on §10.1-1240 B of the statute, and so will not be belabored further in DEQ’s responses.</p> <p>With specific reference to the provision herein questioned, DEQ agrees with the premise of the model and Virginia statutes that it is important for a licensed and certified PE to certify compliance. This qualification helps ensure the validity and reliability of the information, and may reduce the need for the Department itself to conduct inspections. With PE certification, it is anticipated that DEQ could chiefly be monitoring the receipt of required reports, as opposed to conducting all UECA-related inspections itself. (Where DEQ is the Holder, it will be evaluated on a case-by-case basis the extent to which compliance inspections can or should be delegated.) If a PE is not going to certify compliance information, then DEQ’s fee calculation for this</p>
------------------------	--	---

<p>Channing Martin; VMA by Joseph Croce</p>	<p>Commenters object to instructions for paragraph 2.b (Description of Contamination & Remedy) and paragraph 3. A (Activity & Use Limitations) within the Virginia UECA Template which require that some or all of the remediation decision document be included, unless the Department agrees otherwise or stipulates which sections of the decision document are to be included. One commenter also objects to the instruction that “if the decision document is subsequently changed, then the applicant shall submit the updated</p>	<p>regulation would likely need to be increased.</p> <p>The commenter further notes that the template instructions for Paragraph 5 of the template imply that the periodic compliance reporting will go on “forever.” His point is well taken. It is correct that the UECA covenant – and thus assurance of compliance with the covenant – does extend into perpetuity, unless otherwise stated in the covenant, or unless the covenant is terminated by one of the means described in the statute. The perpetual nature of UECA covenants was one factor considered by DEQ in establishing the proposed fee schedule.</p> <p>At the same time, DEQ agrees with the commenter’s point that not every UECA covenant will be perpetual, so it might be helpful for the examples to reflect this fact. DEQ will adjust the instructions for this provision in two ways: first, to add an example reflecting a UECA covenant that expires by its own terms (e.g., reporting every 3 years until the specified remediation standard is met); second, to provide an example of reporting every 5 years, in addition to the shorter periods currently illustrated. Staff understands that 5-year inspection intervals are commonly utilized by the federal government for properties previously owned by DOD (apart from the UECA process), and this interval might serve as a logical example that might be more palatable to the commenter and other members of the public than the ones currently provided.</p> <p>Several factors led to DEQ’s decision regarding requirement that all or at least parts of the remediation decision document be included in the UECA environmental covenant.</p> <p>First, the information required in the questioned paragraphs is critical if parties, especially in the distant future, are to understand the problems and required remedies concerning the property. If this information is not preserved, the UECA covenant may, in practical effect, become unenforceable. Even amendment or termination of a UECA covenant could be difficult, if there is no accurate record the activity and use limitations and of the original contamination and pathways that the</p>
---	--	---

	<p>decision document, probably in conjunction with an amendment or termination of the covenant.”</p>	<p>covenant’s activity and use limitations were designed to address.</p> <p>Second, the drafters of the model UECA statute at NCCUSL, as well as experienced OAG staff, advised that the statutory requirement for the UECA covenant to “identify the name and location of any administrative record for the environmental response project” does <u>not</u> imply that the administrative record will continue to exist – at that location or otherwise – beyond the time when the UECA covenant is executed. Accordingly, DEQ is likely to observe the ordinary record retention/destruction policies that apply to its various land-protection-related programs when it is the Agency for remediation of a UECA-encumbered property. DEQ did not factor into its fee calculations the cost of maintaining the administrative record for the life of the UECA covenant (which might be perpetuity). In addition, DEQ has no way of estimating how long EPA or another entity serving as the Agency might retain its administrative records.</p> <p>Third, as aptly noted by one of the commenters, Virginia’s UECA statute does not include the registry requirement found in the model statute. Although DEQ plans to list UECA covenants among the information it enters into electronic databases it maintains (primarily related to EPA requirements), that mechanism is unlikely to be sufficient to memorialize critical information about the contamination and activity & use limitations on UECA-encumbered properties.</p> <p>For these reasons, DEQ believes that all UECA covenants must themselves reflect <u>complete</u> information concerning “Description of Contamination & Remedy” and “Activity & Use Limitations” – the two template provisions discussed here by the commenters. The latter of these provisions is statutorily mandated (§10.1-1240 A), so its importance is obvious. Even though the former of these provisions is based on an “optional” model-statute provision calling for a “brief narrative description” of the contamination and remedy (§10.1-1240 B 4), drafters of the model statute contemplated the existence of the registry provision to accompany this “brief narrative,” and Virginia’s statute lacks the registry provision.</p> <p>The proposed regulation puts the parties on</p>
--	--	--

		<p>notice that DEQ intends to insist on inclusion of the decision document or relevant sections thereof when DEQ is a necessary signatory, unless the other parties provide persuasive alternatives to which DEQ and the other parties agree.</p> <p>Further, the information provided pursuant to these provisions must be consistent with the remediation decision document. The importance of consistency was emphasized by a separate commenter in his informal input last year when staff was doing background UECA research. DEQ agreed with these early comments and sought to ensure consistency with the decision document when drafting the proposed regulation. Inclusion of actual language from the decision document should ensure consistency.</p> <p>The present commenters urge DEQ to require only a summary rather than the decision document itself (or parts thereof). DEQ believes that, no matter how carefully a summary is crafted, the parties (or their lawyers) are likely to argue, especially in subsequent litigation, about any real or perceived differences in the meaning of the covenant summary versus the meaning of the decision document. By requiring that the decision document itself be included in the covenant, DEQ hopes to eliminate that source of potential controversy.</p> <p>One of the commenters points out that a variety of questions may arise in this process. DEQ does not disagree. In keeping with the current template instructions, however, DEQ believes that the Agency can and will resolve any such questions, including which document is the relevant decision document, and which provisions must be included if the document is too lengthy to be appended in its entirety.</p> <p>The template instructions for Paragraph 3.a. provide that the Agency may choose to alter the stated requirements regarding inclusion of the decision document. In deference to the commenters' concerns, DEQ will modify the instructions to clarify the Agency's flexibility regarding inclusion of the decision document.</p>
--	--	---

<p>Channing Martin</p>	<p>Commenter suggests that “environmental remediation” be defined in a way that would ensure that UECA covenants could be utilized for VRP sites on which activity and use limitations are employed without further remediation (or “cleanup”).</p>	<p>As the commenter points out, the UECA statute defines an “environmental response project” to which a UECA environmental covenant may attach as “a plan or work performed for environmental remediation of real property” (§10.1-1238). The proposed UECA regulation repeats this definition (9VAC15-90-10).</p> <p>The commenter is concerned that a court could interpret the term “environmental remediation” within this definition as implying the necessity of “remedying” or “cleaning up” contamination on the site. In reality, an agency may determine after investigation that no cleanup of a site is required, as long as activity and use limitations are in place to protect the public from any impacts from the contamination that is being left in place.</p> <p>DEQ will adjust the definitions section of the regulation to clarify that activity and use limitations alone may constitute “environmental remediation.”</p>
<p>Channing Martin</p>	<p>Commenter believes that DEQ’s definition and use of the term “applicant” create certain problems.</p>	<p>Although the model UECA statute prescribes certain roles for the Owner, Holder, and Agency, in reality another entity may need to act on behalf of the Owner, or perhaps perform other UECA-related functions. For example, an Owner may go bankrupt, or it may be impossible to locate one or more of the Owners. In such cases, another entity may lawfully be able to act on the Owner’s behalf, particularly in submitting UECA documents and/or fees to DEQ or another Agency.</p> <p>UECA experts consulted by DEQ appeared to agree with DEQ that another party might be acting on behalf of the Owner or other party, and that the regulation (and perhaps the statute as well) should allow for that possibility. These advisors seemed to agree with use of the term “applicant” for these purposes.</p> <p>DEQ does not disagree with the commenter, however, that the definition and use of the term “applicant” in the proposed regulation should be refined. DEQ will attempt to resolve the commenter’s concerns. Revisions will include specifying that the Applicant is the person who <u>lawfully</u> submits a proposed environmental covenant, etc. to the Department <u>or other Agency</u>; that the Applicant <u>may</u> be a Grantor</p>

<p>Channing Martin</p>	<p>In the provision regarding late payment of fees (9VAC15-90-40 B 4), commenter suggests that “may be recorded” be substituted for “will be deemed complete.”</p>	<p>for purposes of indexing; that the Applicant may act <u>on behalf of the Owner</u> or other entity (so that it is clear that the Applicant may pay fees on behalf of the fee simple owner).</p> <p>DEQ will make the suggested change.</p>
<p>Channing Martin</p>	<p>In the introductory paragraph of the template, commenter suggests revising the language so that it is clear to the clerk of courts whether the Agency is or is not an Additional Grantee for recordation purposes.</p>	<p>DEQ accepts this suggestion. The introductory paragraph of the template will state that the Agency joins in the covenant. Instructions will specify that, if the parties agree that the Agency will be an Additional Grantee, the introductory paragraph should so state.</p>
<p>Channing Martin</p>	<p>Commenter believes it appropriate to add “as amended” to citations to the Code of Virginia.</p>	<p>Attorneys are trained to include “as amended” in citations to Codes. Apparently citations in Virginia regulations do not follow this protocol. The Department is bound by regulatory protocols but does not disagree with the commenter’s point. The Department will state in the introductory instructions for the template that “All statutory references are to the Code of Virginia, as amended.” Citations in the regulation itself will follow state regulatory protocols.</p>
<p>Channing Martin</p>	<p>The commenter questions the basis for the Department’s requiring a fee and its signature when it is neither the Agency nor the Holder.</p>	<p>DEQ has discussed in a previous response the services it anticipates rendering even when DEQ is not the Agency or the Holder, and fees are needed to cover the costs of these services.</p> <p>Informal advice from the OAG affirms that DEQ is granted broad statutory authority to establish fees to be paid by owners of UECA-encumbered properties (§ 10.1-1248), and to enforce UECA covenants (§ 10.1-1247). Since these authorities can be exercised whether or</p>

		<p>not DEQ is a Holder or approving Agency, it is logical that DEQ can require some type of notification of all environmental covenants. Requiring that all covenants must be sent to DEQ prior to recordation provides DEQ an opportunity to impose these fees. Thus, based on informal legal advice, both the fees and the notice verification (i.e., the “seen and received by DEQ” signature line) are acceptable from a legal perspective when DEQ is not the Agency or the Holder.</p> <p>From a policy perspective, DEQ believes it has a responsibility to the public to be aware of all remediation projects occurring on Virginia soil. Federal participation in a Virginia projects may vary over time; however, the Department will always have a responsibility to protect the health and natural resources of Virginians. Theoretically, EPA or another federal agency could approve a UECA covenant and environmental response plan in Virginia without ever notifying DEQ. Although staff at EPA and DOD currently works cooperatively with DEQ’s Land Protection staff, DEQ believes it important for the UECA regulation to help ensure that federal agencies continue to do so in the future.</p> <p>The “seen and received by” signature line is designed in part to ensure that the appropriate fee is paid to DEQ, but it is also designed to ensure that DEQ is aware of the covenant and remediation project, even when a federal agency is approving the environmental response plan and executing the UECA covenant.</p> <p>The commenter is concerned that having DEQ sign the covenant without being a party to it could raise recording issues with the clerk of court.</p> <p>He also believes that DEQ’s signature implies that DEQ has approved the covenant, even though the signature line says, “seen and received” by DEQ {“if the Department is not the Agency or the Holder”}. He suggests that the template clarify that notice to, but not approval by, DEQ is required when DEQ is not the Agency or Holder.</p> <p>Alternatively, the commenter suggests that a “certification of payment” section be added to the last page of the template. He believes</p>
--	--	---

<p>Channing Martin</p>	<p>The commenter believes that the UECA statute should be repealed, as discussed in an article he has authored. He suggests that DEQ delay issuing the UECA regulations until the 2012 General Assembly has the opportunity to address problems in the UECA statute.</p>	<p>DEQ’s signature on that certification would give subsequent buyers and lenders a level of comfort that the document has been submitted to DEQ and all applicable fees have been paid.</p> <p>DEQ considered how to incorporate the commenter’s suggestions. Instructions for the “seen and received” signature line will be expanded to explain that DEQ is not “approving” the UECA covenant when DEQ is not the Agency or Holder. The logistics and legal status of a DEQ “fee certification” provision within the UECA covenant may present some issues of concern. Accordingly, the fee certification provision will not be added.</p> <p>DEQ received and has considered the commenter’s concerns and suggestion.</p>
------------------------	--	---

Enter any other statement here

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

This regulation is an entirely new one, so there are no “proposed changes” to detail. Development of the regulation was exempted, by statute, from Administrative Process Act requirements; however, the enabling legislation required DEQ to provide an opportunity for public comment. Accordingly, DEQ conducted a 30-day public comment period. The department’s responses to the comments received are provided above, along with the rationale for making or not making suggested changes. The department modified the table below in order to show in the left-hand column the version of the draft regulation that was submitted for public comment, and in the right-hand column the revised version of the regulation in which public comment was taken into account.

Section number	Version Submitted for Public Comment	Final Version
<p>9VAC15-90-10. Definitions.</p>	<p>The following words and terms used in this chapter shall have the following</p>	<p>The following words and terms used in this chapter shall have the</p>

	<p>meanings unless the context clearly indicates otherwise:</p> <p>"Activity and use limitations" means restrictions or obligations created under this chapter with respect to real property.</p> <p>"Agency" means the Department of Environmental Quality or other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created. The Agency may be considered a Grantee for purposes of indexing in the land records.</p> <p>"Applicant" means the person who submits a proposed environmental covenant, amendment, termination, or other UECA document to the Department pursuant to this chapter. The applicant shall be considered a Grantor for purposes of indexing in the land records.</p> <p>"Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.</p> <p>"Department" means the Department of Environmental Quality.</p> <p>"Environmental covenant" or "covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.</p>	<p>following meanings unless the context clearly indicates otherwise:</p> <p>"Activity and use limitations" means restrictions or obligations created under this chapter with respect to real property.</p> <p>"Agency" means the Department of Environmental Quality or other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created. The Agency may be considered a Grantee for purposes of indexing in the land records.</p> <p>"Applicant" means the owner or owners of the property to which the covenant attaches or a person or persons who are lawfully authorized to execute and submit a proposed environmental covenant, amendment, termination, or other UECA document to the Department or other Agency pursuant to this chapter. The applicant may be considered a Grantor for purposes of indexing in the land records.</p> <p>"Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.</p> <p>"Department" means the Department of Environmental Quality.</p> <p>"Environmental covenant" or "covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.</p>
--	--	---

	<p>"Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:</p> <ol style="list-style-type: none"> 1. Under a federal or state program governing environmental remediation of real property; 2. Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or 3. Under a state voluntary clean-up program including the Brownfield Restoration and Land Renewal Act, Chapter 12.1 (§ 10.1-1230 et seq.) of the Code of Virginia. <p>"Holder" means the Grantee of an environmental covenant. A person, including a person that owns an interest in the real property, the Agency, or a municipality or other unit of local government, may be a Holder. The Holder shall be considered a Grantee for purposes of indexing in the land records.</p> <p>"Owner" means the fee simple owner of the property to which the covenant attaches. There may be more than one Owner. The Owner shall be considered a Grantor for purposes of indexing in the land records.</p> <p>"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality, or other legal or commercial entity.</p> <p>"Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an</p>	<p>"Environmental remediation" means the actions required by the Agency as part of an environmental response project. Activity and use limitations alone may constitute "environmental remediation."</p> <p>"Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:</p> <ol style="list-style-type: none"> 1. Under a federal or state program governing environmental remediation of real property; 2. Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or 3. Under a state voluntary clean-up program including the Brownfield Restoration and Land Renewal Act, Chapter 12.1 (§ 10.1-1230 et seq.) of the Code of Virginia. <p>"Holder" means the Grantee of an environmental covenant. A person, including a person that owns an interest in the real property, the Agency, or a municipality or other unit of local government, may be a Holder. The Holder shall be considered a Grantee for purposes of indexing in the land records.</p> <p>"Owner" means the fee simple owner of the property to which the covenant attaches. There may be more than one Owner. The Owner shall be considered a Grantor for purposes of indexing in the land records.</p> <p>"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality, or other legal or</p>
--	---	---

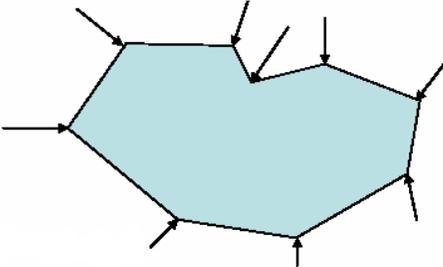
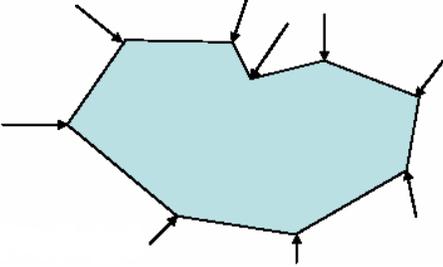
	<p>the Department in accordance with this chapter. In order to meet the regulatory submission requirements, applicants shall utilize the Virginia UECA Template as provided in subsection C of this section.</p> <p>2. Provisions in the Virginia UECA Template that are marked with an asterisk (*) are required by law for all environmental covenants executed pursuant to UECA. Other provisions in this Virginia UECA Template shall be included unless the Department grants permission for particular provisions to be omitted, added, or modified.</p> <p>B. Where the Department is neither the Agency nor the Holder of an environmental covenant, applicants may utilize the Virginia UECA Template or another instrument that meets the requirements of § 10.1-1240 of the Code of Virginia.</p> <p>C. Virginia UECA Template.</p> <p><i>{INSTRUCTIONS are italicized and provided in brackets {}. The applicant may delete these instructions after filling out the template in order to create a more readable document. All provisions other than instructions remain a part of the environmental covenant. As provided in 9VAC15-80-30 A 2, provisions marked with an asterisk (*) are required by law for all environmental covenants executed</i></p>	<p>in accordance with this chapter. In order to meet the regulatory submission requirements, applicants shall utilize the Virginia UECA Template as provided in subsection C of this section.</p> <p>2. Provisions in the Virginia UECA Template that are marked with an asterisk (*) are required by law for all environmental covenants executed pursuant to UECA. Other provisions in this Virginia UECA Template shall be included unless the Department grants permission for particular provisions to be omitted, added, or modified.</p> <p>B. Where the Department is neither the Agency nor the Holder of a UECA environmental covenant, applicants desiring to execute a UECA environmental covenant may utilize the Virginia UECA Template or another instrument that meets the requirements of § 10.1-1240 of the Code of Virginia.</p> <p>C. Virginia UECA Template.</p> <p><i>{INSTRUCTIONS are italicized and provided in brackets {}. The applicant may delete these instructions after filling out the template in order to create a more readable document. All provisions other than instructions remain a part of the UECA environmental covenant. As provided in 9VAC15-90-30 A 2, provisions marked with an asterisk (*) are required by law for</i></p>
--	---	--

	<p><i>pursuant to UECA, and other provisions within this Virginia UECA Template shall be included unless the Department grants permission for particular provisions to be omitted or modified (or for additional provisions to be included). All statutory references are to the Code of Virginia. Note: The term “applicant,” as used in the UECA regulation and this Virginia UECA Template, will typically refer to the Owner/Grantor; however, use of the term “applicant” allows for another party to perform certain roles, provided the Grantor signs the covenant.}</i></p> <p>Tax Map or GPIN No.: _____</p> <p>Prepared by: _____</p> <p>Remediation Program Site ID #: _____</p> <p><u>ENVIRONMENTAL COVENANT</u></p> <p>*This environmental covenant is made and entered into as of the ___ day of _____, _____, by and between _____, whose address is _____ (hereinafter referred to as the “Grantor”), and _____, (hereinafter referred to as the “Grantee” or “Holder”) whose address is _____.</p> <p>_____, whose address is _____ (hereinafter referred to as the “Agency”) also joins in this environmental covenant and may be considered as an Additional Grantee for</p>	<p><i>all environmental covenants executed pursuant to UECA, and other provisions within this Virginia UECA Template should be included unless the Department grants permission for particular provisions to be omitted or modified (or for additional provisions to be included). This regulation provides notice that the Department intends to require inclusion of all provisions in the Virginia UECA Template whenever the Department is a necessary party to a UECA covenant, unless other parties present persuasive alternatives to which the Department agrees. The Department strongly recommends use of all provisions of the Virginia UECA Template even when the Department is not a necessary party to the UECA covenant. All statutory references are to the Code of Virginia (1950), as amended.}</i></p> <p>Tax Map or GPIN No.: _____</p> <p>Prepared by: _____</p> <p>Remediation Program Site ID #: _____</p> <p><u>UECA ENVIRONMENTAL COVENANT</u></p> <p>This environmental covenant is made and entered into as of the ___ day of _____, _____, by and between _____, whose address is _____ (hereinafter referred to as the “Grantor” or “Owner”), and _____, (hereinafter referred to as the “Grantee” or “Holder”) whose address is _____.</p> <p>_____, whose address is _____ (hereinafter referred</p>
--	--	---

	<p>recordation purposes. This environmental covenant is executed pursuant to the Virginia Uniform Environmental Covenants Act, § 10.1-1238 et seq. of the Code of Virginia (UECA). This environmental covenant subjects the Property identified in Paragraph 1 to the activity and use limitations in this document.</p> <p><i>{INSTRUCTIONS: See §10.1-1240.A.1 of the Code of Virginia.}</i></p> <p>1. <u>*Property affected.</u> The property affected (Property) by this environmental covenant is located at _____,</p> <p>_____, Virginia, and is further described as follows: <i>{INSTRUCTIONS: Provide a legally sufficient description of the real property subject to the covenant above as required by §10.1-1240.A.2 of the Code of Virginia. Include the street address of the property, the recorded location of a metes and bounds description or survey plat of the Property (normally the Deed into the current owners), or attach any previously unrecorded survey as an exhibit to this environmental covenant. Note that, if the street address is different from the locality in which the land records are kept (for example, the mailing address is in Ashland but the land records are Hanover), then</i></p>	<p>to as the “Agency”) also joins in this environmental covenant. *This environmental covenant is executed pursuant to the Virginia Uniform Environmental Covenants Act, § 10.1-1238 et seq. of the Code of Virginia (UECA). This environmental covenant subjects the Property identified in Paragraph 1 to the activity and use limitations in this document.</p> <p><i>{INSTRUCTIONS: See §10.1-1240.A.1 of the Code of Virginia. Note: If the parties agree that the Agency shall be an Additional Grantee, then this sentence should be added to the covenant after the sentence containing the Agency’s name and address: “The Agency shall be considered as an Additional Grantee for recordation purposes.”}</i></p> <p>1. <u>*Property affected.</u> The property affected (Property) by this environmental covenant is located at _____,</p> <p>_____, Virginia, and is further described as follows: <i>{INSTRUCTIONS: Provide a legally sufficient description of the real property subject to the covenant above as required by §10.1-1240.A.2 of the Code of Virginia. Include the street address of the property (if available), the recorded location of a metes and bounds description or survey plat of the Property (normally the Deed into the current owners), or attach any previously unrecorded survey as an exhibit to this environmental covenant. Note that, if the street address is different from the locality in which the land records are kept (for example, the mailing address is in Ashland but the land</i></p>
--	---	---

	<p><i>include both pieces of information.}</i></p> <p>2. <u>Description of Contamination & Remedy.</u></p> <p>a. *Identify the name and location of any administrative record for the environmental response project reflected in this environmental covenant.</p> <p>b. Describe the contamination and remedy relating to the Property, including descriptions of the Property before remedy implementation; contaminants of concern; pathways of exposure; limits on exposure; location and extent of contamination; and the remedy/corrective action undertaken.</p> <p><i>{INSTRUCTIONS: Unless otherwise agreed by the Department, a copy of the remediation decision document shall be attached as an exhibit. Note: If the decision document is subsequently changed, then the applicant shall submit the updated decision document, probably in conjunction with an amendment or termination of the covenant.}</i></p> <p>3. <u>Activity & Use Limitations.</u></p> <p>*a. The Property is subject to the following activity and use limitations, which shall run with the land and become binding on Grantor(s) and any successors, assigns, tenants, agents, employees and other persons under its (their) control, until such time as this covenant may terminate as provided by law:</p>	<p><i>records are Hanover), then include both pieces of information.}</i></p> <p>2. <u>Description of Contamination & Remedy.</u></p> <p>a. *Identify the name and location of any administrative record for the environmental response project reflected in this UECA environmental covenant.</p> <p>b. Describe the contamination and remedy relating to the Property, including descriptions of the Property before remedy implementation; contaminants of concern; pathways of exposure; limits on exposure; location and extent of contamination; and the remedy/corrective action undertaken.</p> <p><i>{INSTRUCTIONS: Unless otherwise agreed by the Department, a copy of the remediation decision document shall be attached as an exhibit. Note: If the decision document is subsequently changed, then the applicant shall submit the updated decision document, probably in conjunction with an amendment or termination of the covenant.}</i></p> <p>3. <u>Activity & Use Limitations.</u></p> <p>*a. The Property is subject to the following activity and use limitations, which shall run with the land and become binding on Grantor(s) and any successors, assigns, tenants, agents, employees and other persons under its (their) control, until such time as this covenant may terminate as</p>
--	--	---

	<p><i>{INSTRUCTIONS: Describe each specific restriction on land use, such as whether the property can be used only for non-residential purposes or whether the groundwater may be used as potable water; describe each obligation, such as groundwater monitoring, maintenance of a fence or cap. If the activity and use limitations are stated within the remediation decision document that is incorporated in the applicant’s response to 2.b, then the applicant shall respond to 3.a by referring to the appropriate sections of that decision document and/or by attaching those provisions from within the decision document as an exhibit. If the decision document is lengthy, then the Agency may choose to stipulate which sections must be included in the environmental covenant, rather than requiring that the entire decision document be included. The Department requires that the covenant be consistent with the decision document. A description of the activity and use limitations is required by §10.1-1240.A.3.}</i></p> <p>b. Geographic coordinate lists defining the boundary of each activity and use restriction, depicted as a polygon.</p> <p><i>{INSTRUCTIONS: The applicant shall attach the required coordinates as</i></p>	<p>provided by law:</p> <p><i>{INSTRUCTIONS: Describe each specific restriction on land use, such as whether the property can be used only for non-residential purposes or whether the groundwater may be used as potable water; describe each obligation, such as groundwater monitoring, maintenance of a fence or cap. If the activity and use limitations are stated within the remediation decision document that is incorporated in the applicant’s response to 2.b, then the applicant shall respond to 3.a by referring to the appropriate sections of that decision document and/or by attaching those provisions from within the decision document as an exhibit. If the decision document is lengthy, then the Agency may choose to stipulate which sections must be included in the environmental covenant, rather than requiring that the entire decision document be included. Although it is not generally recommended, the Agency may stipulate another method for compliance with this section if including all or parts of the decision document is not practicable. The Department requires that the UECA environmental covenant be consistent with the decision document. A description of the activity and use limitations is required by §10.1-1240.A.3.}</i></p> <p>b. Geographic coordinate lists defining the boundary of each activity and use restriction, depicted as a polygon.</p> <p><i>{INSTRUCTIONS: The applicant shall attach the required coordinates</i></p>
--	---	---

	<p><i>an exhibit to the covenant in response to 3.b in the following format:</i></p> <p><i>Exhibit ____</i> <i>Activity and Use Limitation Area(s)</i></p> <p><i>{INSTRUCTIONS: For each activity and use restriction, geographic coordinate lists that define the boundary of each activity and use restriction as a polygon shall be developed. The longitude and latitude of each polygon vertex shall meet the following requirements:</i></p> <ul style="list-style-type: none"> <i>○ Decimal degrees format</i> <i>○ At least seven decimal places</i> <i>○ Negative sign for west longitude</i> <i>○ WGS 1984 datum</i> <i>○ Validate by saving the file as: filename.kml and opening in Google Earth</i> <i>○ An example coordinate list and polygon are shown below:}</i>  <p><i>-74.xxxxxxxxxx822,40.yyyyyyyyyy762,0 (Point of Beginning)</i></p>	<p><i>as an exhibit to the covenant in response to 3.b in the following format:</i></p> <p><i>Exhibit ____</i> <i>Activity and Use Limitation Area(s)</i></p> <p><i>{INSTRUCTIONS: For each activity and use restriction, geographic coordinate lists that define the boundary of each activity and use restriction as a polygon shall be developed. The longitude and latitude of each polygon vertex shall meet the following requirements, unless otherwise agreed by the signatories:</i></p> <ul style="list-style-type: none"> <i>○ Decimal degrees format</i> <i>○ At least seven decimal places (to achieve a precision of approximately 0.04 ft based on a typical survey precision of 0.01 ft)</i> <i>○ Negative sign for west longitude</i> <i>○ WGS 1984 datum</i> <i>○ Validate by saving the file as: filename.kml and opening in Google Earth</i> <i>○ An example coordinate list and polygon are shown below:}</i>  <p><i>-74.xxxxxxxxxx822,40.yyyyyyyyyy762,0 (Point of Beginning)</i></p>
--	--	---

	<p>-74.xxxxxxxxxx822,40.yyyyyyyyyy762,0 ← Point of Beginning -74.xxxxxxxxxx309,40.yyyyyyyyyy341,0 -74.xxxxxxxxxx325,40.yyyyyyyyyy132,0 -74.xxxxxxxxxx727,40.yyyyyyyyyy201,0 -74.xxxxxxxxxx162,40.yyyyyyyyyy337,0 -74.xxxxxxxxxx101,40.yyyyyyyyyy146,0 -74.xxxxxxxxxx916,40.yyyyyyyyyy528,0 -74.xxxxxxxxxx378,40.yyyyyyyyyy114,0 -74.xxxxxxxxxx145,40.yyyyyyyyyy279,0 -74.xxxxxxxxxx822,40.yyyyyyyyyy762,0 ← Point of Beginning}</p> <p style="text-align: center;"><u>4. Notice of Limitations in Future Conveyances.</u> Each instrument hereafter conveying any interest in the Property subject to this environmental covenant shall contain a notice of the activity and use limitations set forth in this environmental covenant and shall provide the recorded location of this environmental covenant.</p> <p style="text-align: center;"><u>5. Compliance and Use Reporting.</u> a. By the end of _____, <i>{INSTRUCTIONS: Insert interval for reporting determined to be necessary by</i></p>	<p>- 74.xxxxxxxxxx822,40.yyyyyyyyyy762,0 ← Point of Beginning - 74.xxxxxxxxxx309,40.yyyyyyyyyy341,0 - 74.xxxxxxxxxx325,40.yyyyyyyyyy132,0 - 74.xxxxxxxxxx727,40.yyyyyyyyyy201,0 - 74.xxxxxxxxxx162,40.yyyyyyyyyy337,0 - 74.xxxxxxxxxx101,40.yyyyyyyyyy146,0 - 74.xxxxxxxxxx916,40.yyyyyyyyyy528,0 - 74.xxxxxxxxxx378,40.yyyyyyyyyy114,0 - 74.xxxxxxxxxx145,40.yyyyyyyyyy279,0 - 74.xxxxxxxxxx822,40.yyyyyyyyyy762,0 ← Point of Beginning}</p> <p style="text-align: center;"><u>4. Notice of Limitations in Future Conveyances.</u> Each instrument hereafter conveying any interest in the Property subject to this environmental covenant shall contain a notice of the activity and use limitations set forth in this environmental covenant and shall provide the recorded location of this environmental covenant.</p> <p style="text-align: center;"><u>5. Compliance and Use Reporting.</u> a. By the end of _____, <i>{INSTRUCTIONS: Insert interval for reporting determined to be necessary by</i></p>
--	---	---

	<p><i>the Agency; e.g., “every January following the Agency’s approval of this environmental covenant” or “every third January following the Agency’s approval of this environmental covenant”} and whenever else requested in writing by the Agency, the then current owner of the Property shall submit, to the Agency and any Holder listed in the Acknowledgments below, written documentation stating whether or not the activity and use limitations in this environmental covenant are being observed. This documentation shall be signed by a qualified and certified professional engineer who has inspected and investigated compliance with this environmental covenant. {INSTRUCTIONS: <u>See</u> §10.1-1240.B.2.}</i></p> <p>b. In addition, within one (1) month after any of the following events, the then current owner of the Property shall submit, to the Agency and any Holder listed in the Acknowledgments below, written documentation describing the following: noncompliance with the activity and use limitations in this environmental covenant; transfer of the Property; changes in use of the Property;</p>	<p><i>the Agency; e.g., “every January following the Agency’s approval of this environmental covenant until the specified remediation standards are met and the Agency agrees in writing that reporting is no longer required,” or “every fifth January following the Agency’s approval of this environmental covenant”} and whenever else requested in writing by the Agency, the then current owner of the Property shall submit, to the Agency and any Holder listed in the Acknowledgments below, written documentation stating whether or not the activity and use limitations in this environmental covenant are being observed. This documentation shall be signed by a qualified and certified professional engineer who has inspected and investigated compliance with this environmental covenant. {INSTRUCTIONS: <u>See</u> §10.1-1240.B.2.}</i></p> <p>b. In addition, within one (1) month after any of the following events, the then current owner of the Property shall submit, to the Agency and any Holder listed in the Acknowledgments below, written documentation describing the following: noncompliance with the activity and use limitations in this environmental covenant; transfer of the Property; changes in use of the</p>
--	--	---

	<p>or filing of applications for building permits for the Property and any proposals for any site work, if such building or proposed site work will affect the contamination on the Property subject to this environmental covenant. <i>{INSTRUCTIONS: See §10.1-1240.B.1. Note that transfer of the property also requires payment of a fee pursuant to 9VAC15-80-40 C.}</i></p> <p>6. <u>Access by the Holder(s) and the Agency.</u> In addition to any rights already possessed by the Holder(s) and the Agency, this environmental covenant grants to the Holder(s) and the Agency a right of reasonable access to the Property in connection with implementation, inspection or enforcement of this environmental covenant. <i>{INSTRUCTIONS: See §10.1-1240.B.3.}</i></p> <p>7. <u>Subordination.</u> If there is an agreement to subordinate one or more prior interests in the Property to this environmental covenant, then the subordination agreement(s) is/are set forth as follows: <i>{INSTRUCTIONS: The applicant shall additionally provide to the Agency and the Holder(s) a list of all encumbrances on the property based upon a title review conducted by a title insurance company or attorney at law. The Agency and Holder may consider which, if any, of these encumbrances need to be subordinated prior to the Agency's or the Holder's signing the proposed covenant. At the</i></p>	<p>Property; or filing of applications for building permits for the Property and any proposals for any site work, if such building or proposed site work will affect the contamination on the Property subject to this environmental covenant. <i>{INSTRUCTIONS: See §10.1-1240.B.1. Note that transfer of the property also requires payment of a fee pursuant to 9VAC15-90-40 C.}</i></p> <p>6. <u>Access by the Holder(s) and the Agency.</u> In addition to any rights already possessed by the Holder(s) and the Agency, this environmental covenant grants to the Holder(s) and the Agency a right of reasonable access to the Property in connection with implementation, inspection or enforcement of this environmental covenant. <i>{INSTRUCTIONS: See §10.1-1240.B.3.}</i></p> <p>7. <u>Subordination.</u> If there is an agreement to subordinate one or more prior interests in the Property to this environmental covenant, then the subordination agreement(s) is/are set forth as follows: <i>{INSTRUCTIONS: The applicant shall additionally provide to the Agency and the Holder(s) a list of all encumbrances on the property based upon a title review conducted by a title insurance company or attorney at law. The Agency and Holder may consider which, if any, of these encumbrances need to be subordinated prior to the Agency's or</i></p>
--	---	--

	<p><i>direction of the Agency or the Holder, the subordination agreement for such encumbrances shall be reproduced within the covenant in the applicant's response to paragraph 7 or attached as an exhibit.}</i></p> <p>8. <u>Recording & Proof & Notification.</u></p> <p>*a. Within 30 days after the date of the Agency's approval of this environmental covenant, the Grantor shall file, or cause to be filed, this environmental covenant with the Clerk of the Circuit Court for each locality wherein the Property is located. The Grantor shall likewise file, or cause to be filed, any amendment, assignment, or termination of this environmental covenant with the applicable Clerk(s) of the Circuit Court within 30 days of their execution. Any environmental covenant, amendment, assignment, or termination recorded outside of these periods shall be invalid and of no force and effect. <i>{INSTRUCTIONS: see §10.1-1244.}</i></p>	<p><i>the Holder's signing the proposed covenant. At the direction of the Agency or the Holder, the subordination agreement for such encumbrances shall be reproduced within the covenant in the applicant's response to paragraph 7 or attached as an exhibit.}</i></p> <p>8. <u>Recording & Proof & Notification.</u></p> <p>*a. Within 90 days after the date of the Agency's approval of this UECA environmental covenant, the Grantor shall record, or cause to be recorded, this environmental covenant with the Clerk of the Circuit Court for each locality wherein the Property is located. The Grantor shall likewise record, or cause to be recorded, any amendment, assignment, or termination of this UECA environmental covenant with the applicable Clerk(s) of the Circuit Court within 90 days of their execution. Any UECA environmental covenant, amendment, assignment, or termination recorded outside of these periods shall be invalid and of no force and effect. <i>{INSTRUCTIONS: Recordation of UECA environmental covenants, amendments, and termination is required by §10.1-1244 A; however, the deadline for doing so is not specified in the statute. Pursuant to this regulation, the specified Virginia UECA documents shall be recorded within 90</i></p>
--	--	--

	<p>*b. The Grantor shall send a file-stamped copy of this environmental covenant, and of any amendment, assignment, or termination, to the Holder(s) and the Agency within 60 days of recording. Within that time period, the Grantor also shall send a file-stamped copy to the chief administrative officer of each locality in which the Property is located, any persons who are in possession of the Property who are not the Grantors, any signatories to this covenant not previously mentioned, and any other parties to whom notice is required pursuant to the Uniform Environmental Covenants Act. <i>{INSTRUCTIONS: see §10.1-1243.}</i></p> <p>*9. <u>Termination or Amendment.</u> This environmental covenant is perpetual and runs with the land unless terminated or amended (including assignment) in accordance with UECA.</p>	<p><i>days unless the Agency and other signatories agree otherwise.}</i></p> <p>*b. The Grantor shall send a file-stamped copy of this environmental covenant, and of any amendment, assignment, or termination, to the Holder(s) and the Agency within 60 days of recording. Within that time period, the Grantor also shall send a file-stamped copy to the chief administrative officer of each locality in which the Property is located, any persons who are in possession of the Property who are not the Grantors, any signatories to this covenant not previously mentioned, and any other parties to whom notice is required pursuant to the Uniform Environmental Covenants Act. <i>{INSTRUCTIONS: Notice to the parties specified above is required by §10.1-1243 “in the manner required by the agency.” Pursuant to this regulation, notice of the specified UECA documents shall be provided in the time and method described above unless otherwise directed by the Department or by another Agency in cases where the Department is not the Agency.}</i></p> <p>*9. <u>Termination or Amendment.</u> This environmental covenant is perpetual and runs with the land unless terminated or amended (including assignment) in</p>
--	---	--

	<p style="text-align: center;">10. <u>Enforcement of environmental covenant.</u> This environmental covenant shall be enforced in accordance with § 10.1-1247 of the Code of Virginia.</p> <p>ACKNOWLEDGMENTS:</p> <p>*GRANTOR(S) (<i>All Fee Simple Owners</i>)</p> <p style="text-align: right;">{Name</p> <p>of Owner}, Grantor</p> <p>Date: _____ By _____</p> <p>(signature): _____ Name _____</p> <p>(printed): _____ Title: _____</p> <p>_____</p> <p>COMMONWEALTH OF VIRGINIA <i>{other state, if executed outside Virginia}</i> CITY/COUNTY OF _____</p> <p>On this ___ day of _____, 20__, before me, the undersigned officer, personally appeared _____ {<i>Owner, Grantor</i>} who acknowledged himself/herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that s/he freely executed the same for the purposes therein contained.</p> <p>In witness whereof, I hereunto set my hand and official seal.</p> <p>My commission expires: _____</p> <p>Registration #: _____</p> <p>_____</p>	<p>accordance with UECA.</p> <p style="text-align: center;">10. <u>Enforcement of environmental covenant.</u> This environmental covenant shall be enforced in accordance with § 10.1-1247 of the Code of Virginia.</p> <p>ACKNOWLEDGMENTS:</p> <p>*GRANTOR(S) (<i>All Fee Simple Owners</i>)</p> <p style="text-align: right;">{Nam</p> <p>e of Owner}, Grantor</p> <p>Date: _____ By _____</p> <p>(signature): _____ Name _____</p> <p>(printed): _____ Title: _____</p> <p>_____</p> <p>COMMONWEALTH OF VIRGINIA <i>{other state, if executed outside Virginia}</i> CITY/COUNTY OF _____</p> <p>On this ___ day of _____, 20__, before me, the undersigned officer, personally appeared _____ {<i>Owner, Grantor</i>} who acknowledged himself/herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that s/he freely executed the same for the purposes therein contained.</p> <p>In witness whereof, I hereunto set my hand and official seal.</p> <p>My commission expires: _____</p> <p>Registration #: _____</p> <p>_____</p>
--	--	--

	<p>_____ Notary Public</p> <p><i>{REPEAT AS NECESSARY}</i></p> <p>*HOLDER(S) Date: _____ {Name of Holder}, Grantee By (signature): _____ Name (printed): _____ Title: _____</p> <p>COMMONWEALTH OF VIRGINIA <i>{other state, if executed outside Virginia}</i> CITY/COUNTY OF _____</p> <p>On this ___ day of _____, 20__, before me, the undersigned officer, personally appeared _____ {Holder, Grantee} who acknowledged himself/herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that s/he freely executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.</p> <p>My commission expires: _____</p> <p>Registration #: _____ _____</p> <p>_____ Notary Public</p> <p><i>{REPEAT AS NECESSARY}</i></p>	<p>_____ Notary Public</p> <p><i>{REPEAT AS NECESSARY}</i></p> <p>*HOLDER(S) Date: _____ {Nam e of Holder}, Grantee By (signature): _____ Name (printed): _____ Title: _____</p> <p>COMMONWEALTH OF VIRGINIA <i>{other state, if executed outside Virginia}</i> CITY/COUNTY OF _____</p> <p>On this ___ day of _____, 20__, before me, the undersigned officer, personally appeared _____ {Holder, Grantee} who acknowledged himself/herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that s/he freely executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.</p> <p>My commission expires: _____</p> <p>Registration #: _____ _____</p> <p>_____ Notary Public</p>
--	---	--

	<p>*AGENCY</p> <p>APPROVED by the <i>{Department of Environmental Quality and/or other Agency}</i> as required by Virginia Code § 10.1-1238 <i>et seq.</i></p> <p>Date: _____ By _____ (signature): _____ Name (printed): _____ Title: _____</p> <p>SEEN AND RECEIVED by the Department of Environmental Quality <i>{if the Department is not the Agency or the Holder}</i></p> <p>Date: _____ By _____ (signature): _____ Name (printed): _____ Title: _____</p> <p><i>{END of Virginia UECA Template}</i></p> <p>D. The Department requires submittal of the appropriate fee in accordance with the fee schedule provided in 9VAC15-80-40 before the Department approves or signs an environmental covenant. The Department may require submittal of this fee before the Department reviews</p>	<p><i>{REPEAT AS NECESSARY}</i></p> <p>*AGENCY</p> <p>APPROVED by the <i>{Department of Environmental Quality and/or other Agency}</i> as required by Virginia Code § 10.1-1238 <i>et seq.</i></p> <p>Date: _____ By _____ (signature): _____ Name (printed): _____ Title: _____</p> <p><i>{REPEAT AS NECESSARY}</i></p> <p>SEEN AND RECEIVED by the Department of Environmental Quality <i>{if the Department is not the Agency or the Holder}</i> <i>{INSTRUCTIONS: In accordance with 9VAC15-90-40, notice and payment of a fee to DEQ is required for every UECA environmental covenant in Virginia. However, when DEQ is not the Agency or Holder, no approval of the UECA document by DEQ is necessary or will be provided.}</i></p> <p>Date: _____ By _____ (signature): _____ Name (printed): _____ Title: _____</p> <p><i>{END of Virginia UECA Template}</i></p> <p>D. The Department requires submittal of the appropriate fee in accordance with the fee schedule provided in 9VAC15-90-40 before the Department approves or signs a UECA environmental covenant. The Department may require submittal of this fee before the Department</p>
--	---	--

<p>9VAC15-90-40. Fees.</p>	<p>a UECA document.</p> <p>A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from an applicant in accordance with this chapter.</p> <p>B. Permit fee payment and deposit. Fees related to environmental covenants shall be paid by the applicant as follows:</p> <ol style="list-style-type: none"> 1. Due date. Where the Department is the Agency or the Holder of the environmental covenant, all fees are due upon submittal to the Department of the proposed environmental covenant, covenant amendment, termination, or notification of property transfer. Where the Department is neither the Agency nor the Holder of the environmental covenant, a copy of the environmental covenant, covenant amendment, termination, or notification of property transfer and the accompanying fee are due prior to recordation. 2. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23240. 3. Incomplete payments. All incomplete payments shall be deemed nonpayments. 4. Late payment. No environmental covenant, environmental covenant amendment or termination 	<p>reviews a UECA document.</p> <p>A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from a fee simple owner or applicant in accordance with this chapter.</p> <p>B. Fee payment and deposit. Fees related to UECA environmental covenants shall be paid by the fee simple owner or applicant as follows:</p> <ol style="list-style-type: none"> 1. Due date. Where the Department is the Agency or the Holder of the UECA environmental covenant, all fees are due upon submittal to the Department of the proposed environmental covenant, covenant amendment, termination, or notification of property transfer. Where the Department is neither the Agency nor the Holder of the UECA environmental covenant, a copy of the environmental covenant, covenant amendment, termination, or notification of property transfer and the accompanying fee are due prior to recordation. 2. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23240. 3. Incomplete payments. All incomplete payments shall be deemed nonpayments. 4. Late payment. No environmental covenant, environmental covenant
-----------------------------------	---	---

	<p>under UECA and this chapter will be deemed complete until the Department receives proper payment.</p> <p>C. Fee schedules. Each environmental covenant, environmental covenant amendment, termination, or property transfer is a separate action and shall be assessed a separate fee. The amount of the fee is based on the costs associated with the implementation of UECA as required by this chapter. The fee schedules are shown in the following table:</p> <p>Type of Action</p> <p>1. Environmental Covenants where the Department is the Agency:</p> <ul style="list-style-type: none"> a. Initial submittal - \$4,000 b. Amendment - \$4,000 c. Termination - \$4,000 d. Property transfer - \$100 <p>2. Environmental Covenants where the Department is the Holder:</p> <ul style="list-style-type: none"> a. Initial submittal - \$24,000 b. Amendment - \$24,000 	<p>amendment or termination under UECA and this chapter may be recorded until the Department receives proper payment.</p> <p>C. Fee schedules. Each UECA environmental covenant, UECA environmental covenant amendment, termination of a UECA environmental covenant, or transfer of a property encumbered by a UECA environmental covenant is a separate action and shall be assessed a separate fee. The amount of the fee is based on the costs associated with the implementation of UECA as required by this chapter. The fees required for UECA transactions where the Department is either the Agency or the Holder are due whenever the Department is the sole Agency or the sole Holder or when the Department is one of multiple parties serving in either of these capacities. Where the Department is both an Agency and a Holder, only the fees specified for the Department as Holder shall obtain. The fee schedules are shown in the following table:</p> <p>Type of Action</p> <p>1. UECA Environmental Covenants where the Department is the Agency:</p> <ul style="list-style-type: none"> a. Initial submittal - \$4,000 b. Amendment - \$4,000 c. Termination - \$4,000 d. Property transfer - \$100 <p>2. UECA Environmental Covenants where the Department is the Holder:</p> <ul style="list-style-type: none"> a. Initial submittal - \$24,000 b. Amendment - \$24,000 c. Termination - \$24,000
--	---	--

	<p>Code of Virginia.</p> <p>B. Limitations. UECA and this chapter do not limit the regulatory authority of the Agency or the Department under law with respect to an environmental response project.</p> <p>C. Liability. A person is not responsible for or subject to liability for environmental remediation solely because he has the right to enforce an environmental covenant.</p>	<p>§ 10.1-1247 of the Code of Virginia.</p> <p>B. Limitations. UECA and this chapter do not limit the regulatory authority of the Agency or the Department under law with respect to an environmental response project.</p> <p>C. Liability. A person is not responsible for or subject to liability for environmental remediation solely because he has the right to enforce a UECA environmental covenant.</p>
--	---	--

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The UECA legislation adopted by the Virginia General Assembly is quite specific, and the regulations implementing the legislation had to match the statute’s requirements. The subject of the legislation is a legal contract, which must meet specific legal requirements. Therefore, the department was somewhat limited in what alternatives could be considered.

DEQ discussed a number of approaches and alternative provisions with individual stakeholders and stakeholder groups, with officials who work with UECA in EPA and other states, with our legal advisors at the Office of the Attorney General, with representatives of the military, and with NCCUSL representatives who helped draft the model UECA statute. DEQ also considered – and in many cases accepted – suggestions made by commenters during the public comment period. The approach taken in the final regulation incorporates the provisions and approach – including provision of a UECA covenant template – that appeared the most reasonable and user-friendly.

Since there is no accurate way to predict what type or size of entity will submit a draft UECA covenant to DEQ, it is difficult to analyze impacts on small businesses *per se*.

Family impact

The department does not expect that the regulation will have a direct impact on the institution of the family or family stability.